

**Letter of Findings Number: 03-20140308P
Tax Administration
For Tax Period ending October 31, 2013**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.

ISSUE

I. Tax Administration—Penalty and Interest.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-10-1; IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of penalty.

STATEMENT OF FACTS

Taxpayer is an Indiana business. Taxpayer made several late withholding tax payments in the last quarter of 2013. The Indiana Department of Revenue ("Department") assessed penalty and interest for the August 2013 and October 2013 late payments. Taxpayer disagreed with the imposition of penalties and interest. The Department waived the penalty imposed on the late payment for August but did not waive the penalty imposed on the late payment for October. Taxpayer protested the denial of waiver of penalty for the October payment. An administrative hearing was conducted and this Letter of Findings results. Further facts will be supplied as required.

I. Tax Administration—Penalty and Interest.

DISCUSSION

Taxpayer is an Indiana business that made several late withholding tax payments. Taxpayer protests that the penalty imposed is inappropriate since it hired a payroll service and that the payroll service suffered a "glitch" in its payment system resulting in the late payment. Taxpayer states that the payroll service has since taken corrective steps to prevent such a glitch in the future. Taxpayer asks for an abatement of the penalty and interest assessed against it for the tax period ending October 31, 2013. As an initial point, the Department notes that it may not waive interest, as provided by IC § 6-8.1-10-1(e). Regarding the imposition of penalty, the Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c).

The Department refers to IC § 6-8.1-10-2.1(d), which states:

If a person subject to the penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit tax held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty.
(Emphasis added).

Next, the Department refers to [45 IAC 15-11-2\(b\)](#), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.
(Emphasis added).

Finally, [45 IAC 15-11-2\(c\)](#) provides in pertinent part:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.
(Emphasis added).

After review of the documentation and analysis provided in the protest process, the Department may not waive interest, as provided by IC § 6-8.1-10-1(e), or penalty as provided by [45 IAC 15-11-2\(c\)](#). IC § 6-8.1-10-2.1 requires a taxpayer to show that failure to remit taxes in a timely manner is due to reasonable cause. Taxpayer failed to demonstrate reasonable cause and as a result Taxpayer's protest is denied. Therefore, the late payment at issue in this protest is not an isolated event. Taxpayer missed several withholding payments and the Department waived the penalty imposed on the first such occurrence. Missing a second withholding payment in such rapid succession is not reasonable and so waiver of penalty for the October 2013 payment is not appropriate. Taxpayer has not met the burden imposed under IC § 6-8.1-5-1(c) of proving the proposed assessment wrong.

FINDING

Taxpayer's protest is denied.

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